

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

JOHN WESLEY KENDRICK

§

v.

§ CIVIL ACTION NO. 9:08cv122

DIRECTOR, TDCJ-CID

§

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner John Kendrick, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of disciplinary action taken against him during his confinement in TDCJ-CID. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Kendrick states that he received a disciplinary case for allegedly masturbating in public. On March 20, 2008. He contends that he was denied due process because he was not “in public” but rather was in his cell, and he was not masturbating. Kendrick says that he has a right of privacy in his cell which was violated through the writing of this case. As punishment for the disciplinary case, Kendrick received 30 days of cell and commissary restrictions, reduction in classification status, and reduction in custody status. He states that he did not lose any good time, and indicates that he is serving a life sentence and thus is ineligible for release on mandatory supervision.

After review of the pleadings, the Magistrate Judge issued a Report on July 8, 2008, recommending that the petition be dismissed. The Magistrate Judge concluded that Kendrick had failed to show the deprivation of a constitutionally protected liberty interest, as set forth by the Supreme Court in Sandin v. Conner, 115 S.Ct. 2293, 2301 (1995). The Magistrate Judge further recommended that Kendrick be denied a certificate of appealability *sua sponte*.

Kendrick received a copy of the Magistrate Judge's Report on July 14, 2008, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Magistrate Judge's Report is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus is DISMISSED with prejudice. It is further

ORDERED that the Petitioner John Wesley Kendrick is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

SIGNED this the 20 day of August, 2008.



Thad Heartfield
United States District Judge